

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

|   |   |                                       |
|---|---|---------------------------------------|
| <b>ERNEST SUTTLES,</b>                    | ) |                                       |
|   | ) |                                       |
| <b>Plaintiff,</b>                         | ) |                                       |
|   | ) |                                       |
| <b>v.</b>                                 | ) | <b>Case No. 2:19-cv-02502-JTF-cgc</b> |
|   | ) | <b>JURY DEMAND</b>                    |
| <b>UNIVERSITY OF MEMPHIS,</b>             | ) |                                       |
| <b>KENNETH P. ANDERSON, in his</b>        | ) |                                       |
| <b>individual capacity, and DR. DAVID</b> | ) |                                       |
| <b>RUDD, in his individual capacity,</b>  | ) |                                       |
|   | ) |                                       |
| <b>Defendants.</b>                        | ) |                                       |

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**THE UNIVERSITY OF MEMPHIS’S  
MOTION TO DISMISS THE FIRST AMENDED COMPLAINT**

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The University of Memphis (“the University”)<sup>1</sup> moves the Court to dismiss Plaintiff’s claims against the University in the First Amended Complaint<sup>2</sup> (ECF #12) pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction.

Plaintiff brings three claims against the University. First, Plaintiff alleges the University violated Title IX of the Education Amendments Act of 1972 by failing “to conduct an adequate, reliable, and impartial investigation.” (*Id.* ¶¶ 34–52.) Plaintiff requests an award of money damages from the University. (*Id.*, “Prayer for Relief,” ¶ 1.) Plaintiff’s Title IX claim must be dismissed because the claim is barred by the one-year statute of limitations.

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<sup>1</sup> This motion to dismiss is filed exclusively on behalf of the University.

<sup>2</sup> The University filed a motion to dismiss (ECF #9) the original complaint (ECF #1). In response, Plaintiff filed both an amended complaint (ECF #12) and a response to the University’s motion to dismiss (ECF #13). An amended complaint supersedes the original complaint and renders the initial pleading “a nullity.” *Alsbrook v. Recontrust Co., N.A.*, No. 2:13-cv-02067-JPM-cgc, 2013 WL 1820049, at \*1 (W.D. Tenn. Apr. 30, 2013). “Courts in this Circuit and others will deny motions to dismiss a complaint as moot after plaintiff subsequently files an amended complaint.” *Id.* As the University’s motion to dismiss was rendered moot by the First Amended Complaint, Plaintiff’s response to the University’s motion to dismiss (ECF #13) should also be deemed moot. The First Amended Complaint and the University’s Motion to Dismiss the First Amended Complaint are the controlling pleadings moving forward.

Second, Plaintiff brings a Section 1983 claim against the University and alleges the University violated the Fourteenth Amendment by depriving Plaintiff of property and liberty interests without providing him appropriate due process. (*Id.* ¶¶ 53–65.) Plaintiff requests injunctive relief related to Plaintiff’s educational records from the University. (*Id.*, “Prayer for Relief,” ¶ 2.) Plaintiff’s Section 1983 claim against the University must be dismissed because the University has Eleventh Amendment immunity against such claims in federal court and because the claim is barred by the one-year statute of limitations.

Finally, Plaintiff alleges the University breached a contract with Plaintiff by rescinding Plaintiff’s athletic scholarship. (*Id.* ¶¶ 66–72). Plaintiff again requests an award of money damages from the University. (*Id.*, “Prayer for Relief,” ¶ 3.) Plaintiff’s breach of contract claim against the University must be dismissed because the University has Eleventh Amendment immunity against such claims in federal court.

The University has filed a contemporaneous memorandum of law in support of the Motion to Dismiss pursuant to Local Rule 7.2.

Respectfully submitted,

**HERBERT H. SLATERY III**  
**ATTORNEY GENERAL AND REPORTER**

s/ Taylor W. Jenkins

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 25, 2019, a copy of THE UNIVERSITY OF MEMPHIS'S MOTION TO DISMISS THE FIRST AMENDED COMPLAINT was filed electronically. Parties may access this filing through the Court's electronic filing system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt, including:

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